

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

MARK A. BRESELOW,

Plaintiff,

Case No. 08-C-122

-vs-

**MICHAEL J. ASTRUE, Commissioner
of Social Security Administration,**

Defendant.

DECISION AND ORDER

On February 4, 2008, Mark Breselow (“Breselow”) filed this appeal from the defendant’s decision denying his application for disability benefits. Breselow requests leave to proceed *in forma pauperis* (“IFP”). To authorize a litigant to proceed IFP, the Court must make two determinations: (1) whether the litigant is unable to pay the costs of commencing the action; and (2) whether the action warrants dismissal because it is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from relief. 28 U.S.C. §§ 1915(a)(1) & (e)(2).

According to Breselow’s financial affidavit, numerous luxury items are included amongst his monthly expenses: clothing (\$75.00), telephone (\$72.38), internet (\$9.95), television (\$19.95), donations and contributions (\$100), and entertainment (?). Breselow also claims to spend \$250/month on transportation, which is strange since he owns two cars. Breselow owns guns valued at \$2000 and he currently has \$897 available to him in a

checking account. Finally, Breselow owns \$71,828.01 in equity against a home valued at \$106,000.00, and he apparently has a balance remaining on a home equity loan. Accordingly, the Court must conclude that Breselow can afford to pay the filing fee (\$350.00) for this action.

Section 1915(e)(2)(A) provides that “the court *shall* dismiss the case at any time if the court determines that . . . the allegation of poverty is untrue.” 28 U.S.C. § 1915(e)(2)(A) (emphasis added). Under the plain language of the statute, the Court must Breselow’s complaint because he “is not sufficiently poor to qualify for *in forma pauperis* status” *Lee v. McDonald’s Corp.*, 231 F.3d 456, 459 (8th Cir. 2000).

NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY ORDERED THAT:

1. Plaintiff’s motion for leave to proceed IFP [Docket No. 2] is **DENIED**; and
2. This matter is **DISMISSED**.

Dated at Milwaukee, Wisconsin, this 7th day of February, 2008.

SO ORDERED,

s/ Rudolph T. Randa
HON. RUDOLPH T. RANDA
Chief Judge